

BZA #8703 HARGER REALTY CORP., Appellant  
DENIED

FACTS:

1. The present zoning is C-1.
2. The appellant proposes to construct a professional office building at this location.
3. The appellant is requesting a variance from the use requirements of the C-1 District to permit the location of a theater in the basement of the proposed professional office building.
4. The appellant makes this request because of an alleged hardship arising from the unusual sub-soil conditions encountered, which will require special and costly construction methods to overcome.
5. A topographic survey, BZA Exhibit No. 15, prepared by Wallace R. Amos & Assoc., dated October 1965, is attached to the record. The property is 194 feet X 117 feet plus or minus and contains 22,860 square feet. It is situated on a side hill. The major portion of the site is a terrace approximately 19 feet above the curb grade. The rear portion of the property slopes upward to a public alley approximately 9 feet above the level of the terrace. The slopes are abrupt and require retaining walls and concrete steps.
6. The test boring survey, Exhibit No. 13, prepared by Raymond Concrete Pile Co., dated October 21, 1965, is attached to the record. Three test borings were made parallel to the alley and penetrated the sub-soil structure to the maximum depth of 39.6 feet. The results of the fully documented report can be summarized as follows:

A brown, sandy clay with a trace of quartz exists to a maximum depth of 9 feet. Underneath this is a layer of varied colored micaceous sand with a trace of clay extending to 38 feet below the surface. Below this level is a brown, gray disintegrated rock.
7. Architectural plans, Exhibits Nos. 1, 11, & 12, prepared by Henry Holle & Assoc., Architects, and a letter are attached to the record. Exhibits 1 and 2 show the proposed development plan for the professional office building with a theater in the basement and a second alternative without the theater. The site plan for both alternatives meet the minimum requirements for lot coverage, rear and side yards, height, F.A.R., and off-street parking. The cost analysis prepared for these two alternatives indicates that it will cost \$179,138.00 more to construct the necessary foundations to overcome the adverse condition of the site.

Exhibit No. 12 shows a third alternative plan to construct a 3-level professional office building with one level partially below grade and 2 stories completely above grade. The site plan for the third alternative also meets the minimum requirements for lot coverage, rear and side yards, height, F.A.R., and off-street parking. No additional construction costs are required to overcome sub-soil conditions.

8. A letter from Koones & Montgomery Inc., Realtors, signed by H. W. Morgan, Jr., MAI, SRA and Charles K. Koones, III, dated April 11, 1962 was submitted. Their analysis of the three proposals is as follows:

Alternate No. 1 - A professional office building with the theater in the basement would be capable of producing a return of 7.6% on the capital invested, summarized in report as "moderately attractive", Alternate No. 2 - a professional office building without the theater would be capable of producing a return of 4.9% on the capital invested, summarized as "unacceptable under normal risks involved," and Alternate No. 3 - A 3-story professional office building would be capable of producing a return of 16.9% on the capital invested, summarized as "quite attractive".

9. There are letters from the residents in the area in opposition to the requested variance. Their principal complaint is that it will aggravate an existing parking problem and would disrupt the residential character of property in the surrounding area

One letter in support of the request was qualified by a request that they be assured a plenty of off-street parking, as there is not enough parking in the area.

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OPINION:

The Board is of the opinion that the appellant has not established a hardship of sufficient magnitude due to the extraordinary and exceptional conditions of the property, which would prevent a reasonable use and return of the proposed professional office building for a C-1 use.

The appellant presented three separate development plans prepared by an architect, which showed that an appropriate professional office building for C-1 use can be constructed on this site, which will meet all of the minimum requirements for percentage of lot coverage, side and rear yards, F.A.R. , and off-street parking.

The test boring data and the appraiser's opinion are not disputed, but neither did they present any evidence which showed that an appropriate professional office building for C-1 uses, could not be constructed at this location.

*(which would determine a moderately attractive professional building)*

The proposed theater is specifically mentioned and first included as a principal use in a C-2 District, and the Board does not have the right to add to the list of permitted uses in a C-1 District any use which is first permitted in a less restricted district. This would constitute an amendment to the Zoning Ordinance and is a legislative function specifically delegated to the Zoning Commission.

he request is denied.

*unless there are exceptional conditions pertaining to the land which prevent a reasonable use of the property. In the absence of this demonstration,*